UNITED NATIONS

AT

Administrative Tribunal

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28 July 1995

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 714

Case No. 775: SALEH

Against: The Commissioner General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen; Vice-President, presiding; Mr. Hubert Thierry; Mr. Francis Spain;

Whereas, on 17 December 1993, Salah Mustafa Saleh, a former area staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, filed an application requesting the Tribunal to order:

"a. Rescission of the decision of summary dismissal, - ... -, and reinstatement to duty.

b. [That] the period of cessation [be considered] as special leave with full pay.

c. [Release] of the Agency's Provident Fund contribution unjustifiably deducted.

d. Payment of fair compensation for the injury the Applicant sustained, including a one month salary as termination notice which was withheld by the Respondent. Compensation is estimated at US[$] 30,000.

e. Payment of secretarial and legal counsel's fees estimated at US[$] 2,000."

Whereas the Respondent filed his answer on 26 May 1994;

Whereas the Applicant filed written observations on 28 July 1994;

Whereas, on 24 June 1995, the Applicant submitted an additional statement;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 1 December 1987 as a Teacher, at grade 6, step 07, on a temporary indefinite appointment. He served thereafter until 6 May 1992, when he was dismissed for misconduct.

Between 1988 and 1992, the Applicant made a number of payments to and withdrawals from his Area Staff Provident Fund account. On 14 January 1992, the Applicant asked for partial withdrawal of 35 per cent of his voluntary contributions to the Provident Fund. On 28 January 1992, the Applicant received a cheque from UNRWA, numbered 5095 and drawn on its Chase Manhattan Bank account, in the amount of US$2,002.51.

On 14 April 1992, the Director of UNRWA Affairs, Syria, informed the Comptroller that an overpayment of US$10,000.00 had been made on the cheque issued to the Applicant. He noted "... it is evident that the cheque was tampered with and that someone had made the change" from US$2,002.51 to US$12,002.51. The Director recommended that an external team of auditors be appointed to conduct an investigation. On 17 May 1992, the Applicant was suspended from duty without pay, in accordance with staff rule 110.2, pending investigation of the alteration of the face value of the cheque issued by UNRWA, which he had subsequently cashed.

An auditor from Headquarters investigated both the alteration of the cheque delivered to the Applicant and another altered cheque. He conducted his investigation between 12 May and 20 May 1992, interviewing the money changer who cashed the cheque, through the Lebanon and Gulf Bank, Beirut, an official of the bank involved in

the transaction, the Applicant, and a number of officials and staff members.

After interviewing all the witnesses, reviewing the documentary evidence, and confronting the Applicant with that evidence, the auditor stated that the evidence supported the conclusion that the Applicant had altered the cheque.

Following consideration of the auditor's findings, on 17 June 1992, the Director of UNRWA Affairs, Syria, wrote to the Applicant, as follows:

> "Further to our letter of 17 May 1992, ..., this is to advise you that after investigation it was found that you were involved in altering the face value of a cheque issued to you by the Agency which you subsequently cashed, thereby receiving an amount in excess of that for which the cheque was issued.
>
> Therefore, it has been decided to summarily dismiss you from the Agency service effective the date of your suspension (i.e. close of business on 16 May 1992) under the provisions of area staff regulation No. 10.3.
>
> A personnel action form is being issued separately implementing your separation and authorizing payment of the staff Provident Fund benefit only under the provisions of area staff rule No. 109.10, para. 3 (B). In order that these benefits not be withheld, I advise you to obtain clearance certificates from concerned Agency officials and submit them to the Personnel Office as soon as possible."

On 15 July 1992, the Applicant requested the Field Director to review this decision, and on the same date he lodged an appeal with the Joint Appeals Board (JAB). In a reply dated 19 July 1992, the Field Director confirmed the Commissioner General's decision to terminate the Applicant's appointment for serious misconduct. The JAB adopted its report on 28 October 1992. Its recommendation reads as follows:

> "V. Recommendation
>
> 20. ..., the Board unanimously makes its recommendation to uphold the Administration's decision to terminate the Appellant's services by summary dismissal for serious

misconduct effective 16 May 1992 under area staff regulation 10.3; and, that the case be dismissed."

On 4 November 1993, the Commissioner-General transmitted to the Applicant a copy of the JAB report and informed him as follows:

"You will note that the Board concluded that rules and regulations concerning disciplinary measures and termination of staff members' services were properly applied in your case, and that there was no evidence that the decision to summarily dismiss you was influenced by prejudice or any other extraneous factors. Based on these conclusions, the Board unanimously recommended that the Administration's decision be upheld, and your appeal be dismissed. I accept these conclusions and recommendation of the Board."

On 17 December 1993, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Chase Manhattan Bank reimbursed the Commissioner General for his loss on the cheque. This constitutes irrefutable proof of the Applicant's innocence.

2. The decision of the Commissioner General is flawed by mistake of facts and error of law.

Whereas the Respondent's principal contentions are:

1. The Respondent's decision to summarily dismiss the Applicant was proper and is supported by the evidence.

2. The Respondent's decision was not tainted by prejudice or other improper motivation.

3. The auditor's investigation was not biased against the Applicant.

The Tribunal, having deliberated from 7 to 28 July 1995, now pronounces the following judgement:

I. Neither party disputes that the cheque No. 5095 dated 28 January 1992, received by the Applicant from the Respondent for

US$2,001.51 was tampered with, and the amount changed to US$12,002.51 (an excess of US$10,000). The Applicant denies that he did the forging. He implies that it might have been done by any of the intermediaries (at least 3 have been identified) through whom the cheque passed, before it was eventually paid in the forged amount, by the Chase Manhattan Bank, on which the cheque had originally been drawn by the Respondent.

II. As soon as the forgery was detected (no later than 14 April 1992), the Respondent decided to ask for an auditor from the Headquarters of UNRWA in Vienna, to undertake an investigation, as he was of the view that "to appoint a local Board of Enquiry would not solve the issue". This action was in conformity with the requirement that the Respondent follow established procedure and respect due process in exercising his authority to take such disciplinary action as he deems appropriate in any particular case.

III. The Respondent had a fairly extensive enquiry made by the auditor from Vienna. Based on the outcome of that inquiry, he concluded that the Applicant had been "involved in altering the face value of a cheque issued to you (the Applicant) by the Agency which you subsequently cashed, thereby receiving an amount in excess of that for which the cheque was issued." As a result, the Applicant was summarily dismissed for serious misconduct.

IV. In his defence, the Applicant claims that the decision of the Respondent "is flawed by mistake of facts and error of law. It is vitiated by prematurity, preconceived judgement and prejudice." Since most of the comments made by the Applicant relate to the audit report and to the alleged mistakes, contradictions and anomalies in it, the Tribunal examined this report in detail, especially as both the JAB and the Respondent had depended heavily, if not exclusively, on it in concluding that the Applicant was guilty of serious misconduct.

V. The Tribunal notes that the JAB's membership was never questioned and its unanimous conclusions contained, inter alia, two significant matters: (1) the JAB noted that the Applicant agreed at one stage to pay back the money provided that his services were not terminated, and (2) that the Applicant failed to provide the JAB with evidence to modify or nullify the findings of the audit team. The Tribunal takes into account that while the Applicant finds much to criticize in the audit report, he is generally silent on the conclusion of the JAB which had "examined all documents cited before it, including the Appellant's personnel file". In view of all this, any allegation of prejudice against the Applicant must fail; not an iota of evidence has been adduced suggesting that the audit team or the JAB, or for that matter the Respondent, was, or had reason to be, prejudiced against the Applicant.

VI. As for the allegations of irregularities and other deficiencies noted by the Applicant, the Tribunal confines its comments to three points which appear relevant.

(a) The Applicant made several contradictory statements before the auditor. After sifting through them, the auditor reached the conclusion that the Applicant either did the forging himself or that the alterations in the cheque were made with his knowledge. No handwriting experts were called, but as the cheques were hand-written in such a way as to provide "ample opportunity to alter", it is doubtful if any experts - even if they were available - could be of much help: very minor but effective changes were made in the cheque.

(b) The Applicant's argument that, if indeed he were guilty, he would not have given the name of the money changer, is without merit. If he wished - as he obviously did - to implicate money changer(s) in the forgery, he had every reason to identify one or more of them. Besides, in the atmosphere of "mafia like" operations (the Applicant's expression) all the persons in the chain were aware of what the others were doing and it would not have been difficult for the auditors to establish links in the illegal chain.

(c) The Applicant was suspended on 17 May 1992. He was told that "an investigation of the charges is now being made". The Applicant considered himself innocent. On the other hand, the record shows that he never gave a clear picture of what happened. On many occasions he retracted what he had admitted earlier. He kept changing his version(s) of events e.g. stating he had cashed the cheque through someone he had "met in the street".

VII. The Tribunal has consistently held that in disciplinary matters, the Respondent can use his discretion widely to take whatever action he considers appropriate, provided the accused staff members are given fair, adequate and timely opportunity to answer or rebut charges against them. In this case, the Applicant was not denied due process. The Respondent determined, by legitimate means available to him, that the Applicant was culpable. The fact that the Respondent did not suffer any financial loss because of the forged cheque is a separate issue not relevant to the case. He was using his discretion properly when he found that the Applicant was guilty of wrong-doing and dismissed him summarily.

VIII. For the foregoing reasons, the application is rejected, including the Applicant's request for costs.

(Signatures)

Samar SEN
Vice-President, presiding

Hubert THIERRY
Member

Francis SPAIN
Member

Geneva, 28 July 1995

R. Maria VICIEN-MILBURN
Executive Secretary